Supreme Court, U.S.
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In the

Supreme Court of United States

Richard Muzzi

Petitioner

V

Cimarron Software Service, Inc. And DynMcDermott Petroleum Operations Company

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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57pp

Questions Presented for Review

1) Whether summary judgement can be passed against the non moving party; the petitioner, if the moving party; the respondent, has willfully refused to answer an interrogatory, denying the petitioner an opportunity to complete discovery, in direct conflict with this courts ruling under ACF INDUSTRIES, INC., CARTER CARBURETOR DIV. v. E.E.O.C. , 439 U.S. 1081 (1979)

2) Whether summary judgement can be passed against the non moving party; plaintiff, when there are disputed material facts, in direct conflict with this courts ruling under ANDERSON v. LIBERTY LOBBY, INC., 477 U.S. 242 (1986)

3) Whether summary judgement can be granted when the moving party's actions have been pretexual after the Plaintiff; non moving party, has established a prima facie case in direct conflict with UNITED STATES COURT OF APPEALS For the Fifth Circuit No. 98-11138 JOHNNIE SHACKELFORD, Plaintiff-Appellant, v. DELOITTE & TOUCHE, LLP,

4) Whether due process of law and the constitution allow the District Judge, Appeals Judges and the Defense Attorney to commit perjury and contempt by refusing to acknowledge the existence of the Plaintiff's evidence of his heart condition, and the evidence regarding and informing his Employer of all his disabilities, when filing their judgments, in direct conflict with this courts ruling under ANDERSON v. LIBERTY LOBBY, INC., 477 U.S. 242 (1986)

Questions continued next page.

5) Whether due process of law and the constitution allow the District Judge and Appeals Judges to commit perjury and contempt that is above and beyond a bad judgement, by refusing to acknowledge in their judgments that the plaintiff has proven all aspects required by the law to prove discrimination as defined by the Fifth Circuits own rulings. Shilrey v. Chrysler First, Inc., 970 F.2d 39, 41 (5th Cir.1992) and Johnnie Shackelford v. Deloitte & Touche, LLP, Fifth Circuit No 98-11138 (1998)

6) Whether due process of law and the constitution allow a sitting District Judge to clearly demonstrate federal rule 11 by sanctioning the plaintiff and in the same case ignore sanction-able offenses by the defendants, that the Judge was aware of? The defense willfully refused to answer an interrogatory and was not sanctioned nor asked to explain in direct conflict with ACF INDUSTRIES, INC., CARTER CARBURETOR DIV. v. E.E.O.C. , 439 U.S. 1081 (1979) and FRP Rule 11.c.1.B.

7) Whether this Honorable Court with Congress's approval of their rules can refuse this writ of certiorari, without violating the petitioner's constitutional right, which states that no two people who have protection from the United States Constitution can be treated differently from any law or rule that citizens are subject to?

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification.

A. Parties:

Plaintiff-Appellant:

Richard Muzzi

Defendant-Appellees:

Cimarron and DynMcDermott.

B. Attorneys:

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C. Judges:

J. McNamara Chief Judge United States District Court Eastern District of Louisiana.

Judge W. Eugene Davis Circuit judge for appeal and rehearing

Judge Edith H. Jones Circuit judge for appeal and rehearing

Judge Harold R. DeMoss, Jr. Circuit judge for appeal and rehearing

C. Other:

Every citizen of this United States, whether in a State, in a Reservation, in a Commonwealth, in a Territory, in the District of Columbia and etc..

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Petition for the Writ of Certiorari

Petitioner Richard Muzzi respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals in the Fifth Circuit.

Opinions below

The United States Court of Appeals in unreported case number 00-31224. The United States District Court for the Eastern District of Louisiana, New Orleans in unreported case number 99-2795 in Judgement and Minute entry dated September 25, 2000. The Equal Employment Opportunity Commission in unreported charge No 270-99-0461

STATEMENT OF JURISDICTION

Richard Muzzi requests a petition for a Writ of certiorari after having summary judgement affirmed against the plaintiff by the United States Court of Appeals for the Fifth Circuit on March 13, 2001 and the petition of rehearing denied by the same judges on April 10, 2001. This Court has jurisdiction pursuant to Title 28 U.S.C. ' 1254.

This Petition for a Writ of Certiorari was timely filed in accordance with Rule 13(1) of the Rules of the Supreme Court of the United States. 28 U.S.C. 2403(a) may apply in the case as the petitioner questions the Supreme Court Rules, reviewed by congress, that allow this Honorable court to deny this or any writ without comment. And the laws that are not on the books that should give Congress the power to prevent this Honorable court from having authority to deny equity under any law. No other court has heard or has jurisdiction over this question, so the attorney General has not been notified pursuant to 28 U.S.C. 2403(a)

Constitutional and Statutory provision involved

This case involves provisions of the First Amendment of the United States Constitution, Four amendment of the U.S. Const., Fifth Amend of the U.S. Const., Seventh Amend of the U.S. Const., Ninth amend of the U.S. Const., the Pre-Amble to the U.S. Const., Article three, Section one of the U.S. Const., Article three, Section two, Clause one of the U.S. Const., Article three, Section two, Clause three, of the U.S. Const., Article six, Clause two of the U.S. Const. Article six, Clause three, Of the U.S. Const., Title 28, Section 2074 of the U.S. Code and Rule 10 of the Supreme Court rules and Federal Rules of Procedure Rule 11.c.1.B.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." US Const, Amend I.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" US Const, Amend IV

"...nor be deprived of life, liberty, or property, without due process of law..." US Const. Amend. V

"In Suits at common law, where the value in controversy shall exceed twenty dollars, ..., than according to the rules of the common law." US Const amend. VII

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." US Const. Amend. IX

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Pre-amble to the U.S. Const.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. Article III, Section 1.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States... Article three, Section 2, Clause 1 of the U.S. Const.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. Article III, Section II. Clause 3. Of the U.S. Const.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. Article VI. Clause 3. Of the U.S. Const.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. Article VI, Clause 2 of the U.S. Const.

"(a) The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under section 2072" 28 USC 2074

"Review on a write of certiorari is not a matter or right, but of judicial discretion." Rule 10 Consideration Governing Review on Certiorari

"On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto." FRP Rule 11.c.1.B.

Statement of Case

Richard Muzzi's employment circumstances at Cimarron and DynMcDermott bear the burden of proof for discrimination and retaliation under the laws.

Applicable Law

> *To prove a prima facie case of discrimination under the ADA. (1) He has a disability, (2) he is qualified individual for the job. (3) he was subject to an adverse employment decision. And (4) he was replaced by a non-disabled person or treated less favorable than a non-disabled employee(s).* See U.S.C. 12112(a); Seaman V. CSPH, Inc., 179 F. 3d 297, 300 (5th Cir 1999).

A plaintiff establishes a prima facie case of retaliation by showing: (1) that she engaged in activity protected by Title VII; (2) that an adverse employment action occurred; and (3) that there was a causal connection between the participation in the protected activity and the adverse employment decision. Shirley v. Chrysler First, Inc. , 970 F.2d 39, 41 (5th Cir. 1992).

Establishment of a prima facie case gives rise to an inference of discrimination, which shifts the burden of proof to the defendant who must then articulate a legitimate non-discriminatory reason for the challenged employment action. Id. Once the defendant asserts such a reason, the inference of discrimination raised by the prima facie case drops from the case. At that point, summary judgement is appropriate unless the plaintiff can prove that the defendant's rational is pretextual. See UNITED STATES COURT OF APPEALS For the Fifth Circuit No. 98-11138 JOHNNIE SHACKELFORD, Plaintiff-Appellant, v. DELOITTE & TOUCHE, LLP,

Disability

In 1989 Richard Muzzi was diagnosed as *Attention Deficit Disorder and/or Autistic and/or something in the middle* by James Keating L.L.P. G.S.W. psychotherapist. (r 417, 418)

Richard Muzzi has some of the slight physical characteristics of Autism as described by the Scientific American Article "The Early Origins of Autism" by Patricia M Rodier. (r 121-127) See also image of Richard Muzzi's hands and image of normal hands. (r 144,145) Slightly smaller thumbs as defined in the above article can only be caused by a birth defect.

The few studies that have tested non-behavioral features of people with autism, however, have concluded that there are indeed minor physical and neurological anomalies in many case, and they are the same ones noted in thalidomide-induced autism. (r 124)

On January 26, 1998 Richard Muzzi accept a job offer from Cimarron to support work at the Strategic Petroleum Reserve on the DynMcDermott contract. (r 91)

From approximately June 1998 through January 1999, Richard Muzzi was going through therapy for Post - Traumatic memories of past physical and sexual abuse which occurred sometime between the ages four and eight of his childhood. The abuser was a family friend. His therapist was Doctor Arthur Samuels. (r 418, 419, 59)

On October 21, 1998 at 3:10am Richard Muzzi was admitted to the Lafayette General Medical Center because of a suicide attempt (r 129) and was released on October 22, 1998 because he was no longer suicidal. "*Condition on Discharge: improved, not suicidal*"(r 95) His release paper work stated as tolerated for patient's activities. The release paper work stated under "*Patient activities As tolerated and Drive a car: if not dizzy or drowsy.*" (r 95) The release paper work also stated "*Patient follow up care; Should see your physician: Therapist in New Orleans*" (r 95) This form was faxed two or thee weeks after release from the Hospital to Cimarron's Texas location by Richard Muzzi because of Jay Rose's Request.
I faxed them the release from the hospital, Lafayette General, stating that I was no longer suicidal, that I faxed to Cimarron on Jay Rose's request. (r 420, 422)

On October 21, 1998 on admittance to Lafayette General Medical Hospital Richard Muzzi's ECG showed as "*Sinus Tachycardia, Left Artial Enlargement, Cannot Rule out inferior Infarct, age undetermined, abnormal ECG.*" (r 139, 140) On May 18, 2000 Richard Muzzi's EKG is stated as "*Borderline Abnormal*". (r 111) The heart condition of Richard Muzzi has taken at this time, two years to heal and it is still not healed completely.

Qualified for Job

Richard Muzzi was always qualified for the job as indicated in statements from his manager Jay Rose's affidavit.

"Until July of 1998, the plaintiff's performance was such that it merited him a superior performance award." (r 30)

"On December 16, 1998, the plaintiff gave Jay Rose a letter ..." (r 31)

"At that time, Jay Rose told the plaintiff that other than his attendance problems he was a valued employee." (r 31)

Treated less favorable than a non-disabled employee(s)

In mid-November of 1998 Jay Rose changed Richard Muzzi to an hourly employee from a salaried employee. (r 30)

An employee who does the same type of work as Richard Muzzi was hospitalized without any disciplinary actions taken against her.

> *In further answer, defendants Cimarron and DynMcDermott objects to the disclosure of details concerning Michelle Faucheaux's hospitalization on grounds of relevancy and privacy rights, but affirm that no disciplinary action was taken her in connection with the hospitalization.* (r 487)

Engaged in activity protected by Title VII

On December 14, 1998, Richard Muzzi mailed a letter to the EEOC requesting charges of Discrimination be brought against his current employer. This letter clearly stated the plaintiff's disabilities.

> *"I have been diagnosed in 1989 by James Keating L.L.P., G.S.W. Psychotherapist, as ADD and/or Autistic. I have currently been working in therapy with Dr. Arthur Samuels, to remember past physical and sexual abuse.*
>
> ...
>
> *I was still having chest pain after being released from the hospital."* (r 59)

On December 16, 1998, Richard Muzzi gave Jay Rose the letter, which he sent to the EEOC on December 14, 1998.

> Question by Michael Duran during Richard Muzzi's deposition
> *"First of all, did you ever tell them that you had attention deficit disorder?"*
> Answer by Richard Muzzi *"I gave Jay Rose a memo, that I believe you have, that was written to the Equal Employment Opportunity Commission stating my disabilities and stating the problems I was having at work."* (r 419)

Adverse employment actions occurred.

In Mid-November Jay Rose changed the plaintiff from a salaried employee to an hourly employee. (r 30) On December 21, 1998, he, Jay Rose, terminated the plaintiff. (r 32)

Causal connection between the participation in the protected activity and the adverse employment decision.

The time between Richard Muzzi sending the letter to the EEOC, giving the letter to his manager Jay Rose

and his firing is only one week. The time between the protected activity and the firing is a causal connection. On December 14, 1998, Richard Muzzi mailed a letter to the EEOC requesting charges of Discrimination be brought against his current employer. (r 96, 97)

On December 16, 1998, Richard Muzzi gave Jay Rose the letter, which he sent to the EEOC on December 14, 1998. (r 419)
On December 21, 1998 Jay Rose terminated Richard Muzzi's employment. (r 419)

Pretexual behavior of Defense.
Jay Rose lied on his affidavit by stating that Richard Muzzi left work early the day he sent out an email at 1:30 PM which contained a riddle under his signature at the bottom. (r 62), because at 4:50pm (r 63) Richard Muzzi sent our another email.

On December 17, 1998, the day after the plaintiff gave Jay Rose a nonspecific letter.... (r 31)
On that day, the plaintiff left work early." (r 31)

The Defense will fully refused to answer an interrogatory in direct conflict with this courts ruling.

> *"The sanctions order in this case is less severe than that approved in National Hockey League, and it was imposed for a virtually identical reason: a willful failure to answer interrogatories.* (ACF INDUSTRIES, INC., CARTER CARBURETOR DIV. v. E.E.O.C. , 439 U.S. 1081 (1979))

On August 9, 2000 Richard Muzzi mailed to the defense's lawyer Michael M Duran "*Plaintiff Richard Muzzi's Request for updates to all discovery.*" (r 477)
Which stated the following Interrogatory.
Interrogatory No 7.

Identify the PCENTRA trainer's name, address and company worked for, who GAVE the PCENTRA training class in or around the fall and or winter of 1998 (r 477)

On August 15, 2000 Defendant's attorney Michael M Duran mailed to Richard Muzzi. "*Defendants' Cimarron and DynMcDermott's response to plaintiff Richard Muzzi's "Secondary request for Interrogatories"* (r 496) which stated "Response to Interrogatory No 7. *Defendants can not ascertain the name sought.*" (r 496)

Equal Employment Opportunity Commission.
On June 23, 1999 the Equal Employment Opportunity Commission issued a Dismissal and Notice of Rights for Charge No 270-99-0461, indicating that the EEOC is unable to conclude that the information obtained established violations of the statues. (r 221)

United States District Court of the Eastern District of Louisiana.
On September 21, 1999 Richard Muzzi filed suit in Federal Court against Cimarron and DynMcDermott for violations of Title VII, the Americans with Disabilities Act for discrimination and retaliation, under 29 USC 626(e).

Plaintiff never had complete access to discovery.
On April 4, 2000 Richard Muzzi mailed to the defense's lawyer Michael M Duran "*Request for disclosures and Interrogatories.*" (r 481)
This should include the employees who took and gave the training class for PCENTRA's Workflow, which utilized the code developed by the Plaintiff, in or around the fall and winter of 1998. (r 481)
On June 20, 2000 Defendant's attorney Michael M Duran mailed to Richard Muzzi. "*Defendants' Cimarron and DynMcDermott's response to plaintiff Richard Muzzi's Request for Disclosure and Request for*

Interrogatories" (r 483-488) which did not state the PCENTRA trainers name.

On August 9, 2000 Richard Muzzi mailed to the defense's lawyer Michael M Duran "*Plaintiff Richard Muzzi's Request for updates to all discovery.*" (r 477) Which stated the following Interrogatory.

Interrogatory No 7.

Identify the PCENTRA trainer's name, address and company worked for, who GAVE the PCENTRA training class in or around the fall and or winter of 1998. (r 477)

On August 15, 2000 Defendant's attorney Michael M Duran mailed to Richard Muzzi. "*Defendants' Cimarron and DynMcDermott's response to plaintiff Richard Muzzi's Secondary request for Interrogatories*" (r 496) which stated

Response to Interrogatory No 7.

Defendants can not ascertain the name sought. (r 496)

On August 21, 2000 Richard Muzzi mailed to the defense's lawyer Michael M Duran "*Plaintiff Richard Muzzi's Notice to Defendants of Inadequate Response to Interrogatories*" (r 501) Which stated again the following

Interrogatory No 7. "*Identify the PCENTRA trainer's name, address and company worked for, who GAVE the PCENTRA training class in or around the fall and or winter of 1998*" (r 501)

The defendants have still not complied completely with this request.

Summary judgement

On September 25, 2000 Honorable Chief Judge McNamara committed perjury and contempt in his minuet entry by stating the following.

> *Here, Cimarron has shown that it changed the classification of Plaintiff from a Salaried employee to an hourly employee because of a legitimate businesses response to Plaintiff's*

consistent inability to meet the hourly requirements for a salaried employee.

..

Plaintiff has presented insufficient competent summary judgement evidence to show that "but for" his alleged protected disability, he would not have been changed to hourly employee or terminated.

A summary judgement as specified by this Supreme court

by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge .. . The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor see ANDERSON v. LIBERTY LOBBY, INC., 477 U.S. 242 (1986).

A dispute about material facts is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc. , 477 U.S. 242 (1986).

Richard Muzzi has clearly presented enough competent evidence of a heart condition and how it affected his daily life. On October 21, 1998 on admittance to Lafayette General Medical Hospital Richard Muzzi's ECG showed as *Sinus Tachycardia, Left Artial Enlargement, Cannot Rule out inferior Infarct, age undetermined, abnormal ECG.* (r 139, 140)

On May 18, 2000 Richard Muzzi's EKG is stated as "*Borderline Abnormal*". (r 111) The heart condition of

Richard Muzzi has taken at this time, two years to heal and it is still not healed completely.
The release paper from October 22, 1998 stated under "*Patient activities As tolerated and Drive a car: if not dizzy or drowsy.*" (r 95)
The Honorable judge has clearly ignored the evidence presented by Richard Muzzi when writing this minuet entry. This is perjury and contempt, because he has sworn that all evidence was taken into consideration and that his ruling is consistent with *Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).* This minuet entry is clearly not consistent with the ruling of this court.

Richard Muzzi was treated differently under the law.
On November 22, 2000 the Honorable Chief Judge McNamara violated Richard Muzzi's constitutional rights to be treated equal under the law and to be free from arbitrary rule. The violation of Richard Muzzi's constitutional rights is not because he was sanctioned, but because the Honorable judge clearly showed the understanding of Federal Rule 11 and refused to hold this rule to the defendants for their refusal to answer an interrogatory. The Honorable Judge has clearly treated the plaintiff differently then the defense, causing the Plaintiff his liberty and due process of the law. The Honorable Judge has the authority under FRP Rule 11.c.1.B to enforce discovery.

> *On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.* FRP Rule 11.c.1.B

In Richard Muzzi's Opposition to sanctions, the Plaintiff clearly defined the sanctionable offense by the

defense. The Honorable Judge has so far refused to hold the defense to the same laws as the plaintiff.

> *The list below clearly shows the defendant's bad faith in the discovery process and this court's lack of any response to these acts, as well as the specific timing which allowed the Plaintiff no other alternative but to fill the motions in question, to obtain his basic rights guaranteed under the law, the Constitution of the United States and the Bill of Rights.*

The memo then goes on to state ACF INDUSTRIES, INC., CARTER CARBURETOR DIV. v. E.E.O.C. , 439 U.S. 1081 (1979) 439 U.S. 1081, which talks about the sanctionable offense for a failure to answer an interrogatory, highlights the defense refusal to answer an interrogatory, and highlights Federal Rule 11 as stated early in this writ of certiorari.

The Constitution clearly states that no two people who have protection from the United States Constitution can be treated differently from any law or rule that people are subject to.

The constitution clear states that all people of these United States are free from being denied life, liberty or property without due processes of law from any one. Which means that unless Richard Muzzi has violated someone's right to life, liberty, property, or any other right in the constitution, Richard Muzzi can not be treated arbitrarily or differently than someone else under any and all laws. And when someone violates someone else's constitution rights, this can only be held against them as is justifiable under the circumstances.

Since due process of law is not defined any where in the constitution we can only look for the intent of what

the founders of the Constitution intended due process of law to be.

> *It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted. -- Scott v. Sanford*, 60 U.S. 393 (1857)

Article VI, Clause 2 states specifically that the laws created by the Supreme Court and any and all Governments are the "Supreme" Laws of the land.

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.* Article VI, Clause 2.

The Fifth amendment clearly states that all people under the constitution are free from being deprived from life, liberty, or property, without due process of law.

...nor be deprived of life, liberty, or property, without due process of law... US Const. Amend. V

The Fifth amendment very clearly does not put the words Supreme or Common in front of the word LAW, where as Article VI, Clause 2 puts specifically Supreme in front of the word law and the Seventh amendment

puts the word Common in front of the word law.

This clearly shows that the founders of the constitution clearly meant law, any and all law, whether this law is the Supreme law of the land, common law, work-related law, organizational law, Nature's law, any and all laws.

It is also very clear from Article III, Section 2, and Amendment eleven that equity was the intent and was understood to be just as important as law. It specifically did not state equity of Law, but Law and Equity.
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States... Article III, Section 2, Clause 1 of the U.S. Const.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity..
Amendment XI

The use of the word equity directly reflects the pre-amble of the constitution. That we the people are to strive for a more perfect union of rights, creating equality when and where it can be created continually. The founders also did NOT chose to use the words a more perfect Union of States, Corporations, Law or etc. Leaving these words out clearly shows that they meant a union for all that will come after. And what comes after is justice, domestic tranquility, common defense, general welfare, liberty, posterity and not to mention the Constitution and all the laws that steam from that. The founders of this constitution clearly chose to sign the constitution with the Pre-Amble at the top, so that in the future their intent could not be forgotten.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. Preamble to the U.S. Const.

It is clearly the intent of the founders of this constitution that due process of law, would mean that any person is entitled to have the laws and rules applied to them equally that apply to anyone else subject to those laws or rules. And that all courts must uphold all the laws equally to the best of their ability at that given time.

The founders specifically did not define "due process" in the Constitution, because they could only define it for the Government at that time. This absence when it was clearly definable shows their intent. That "Due Process" was for any and all law that we the people are subject to.

The Judicial system is not only interpreting these laws but also equity, equity of the laws, and equity of rights guaranteed every person from the Constitution. If the founders intended only equity of law they would have stated that, but they did not. They specifically placed equity after law, signifying that equity is of the same importance as the law.
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States... Article III, Section 2, Clause 1 of the U.S. Const.

These Courts have since the founding of this country and adaptation of this constitution have had and exercised Supreme Law over all other laws of this land.

The constitution is clear that once an assembly starts to create laws that govern people, these laws are subject to the Rules of the courts, and that these laws can not contradict the rights guaranteed by the constitution to every person. For every rule or law written can not contradict the rights given to every citizen by the Constitution and are subject to the rules of the Constitution as amendment Nine states. *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.* US Const. Amend. IX

The word equity is used specifically instead of equal or equality to indicate what is reasonable at the given time. For instance equality would dictate that no two citizens would pay a different percentage for their taxes. Today however that is not fiscally possible, nor could the very poor even put food on their table if this were true, since they currently do not have equal access to employment. The word Equity is appropriate and clearly shows the meaning of "a more perfect union" from the Pre-amble. We are to continually as equity permits to create equality for all of the One True God's children, which is all life.

It is very apparent that under no interpretation that I can think of for the United States Constitution is there any right to treat any two people differently under any law or rule that governs them. Any organization that create laws and rules to work more efficiently have the same responsibilities as does this court and the Untied States government to treat every person the same and fairly. This is why the founders used the words law and Equity and specifically used no others. This is why the founders used the words due process of law and specifically did not define due process of law. They fully expect as the constitution states and the pre-amble that the laws and rules that govern people

would continually change to be a more perfect union of we the people in all our rights. In fact it is unconstitutional to become a less perfect union of people in all our rights. Every person granted rights under this constitution has the obligation to move toward a more perfect union. No law whether from the government or any organization has the right to define a less perfect union of we the people, from the laws that existed before it. And if a law can be defined to be more perfect without undue hardship; denying someone of their rights such as life; liberty, property or etc, it most be updated or made more perfect.

It could be said that what someone does with their own property and land is their own business. This is true, but once another person becomes involved, it is we the people's business. And once rules and laws govern the behavior of a person by another, the Constitution clearly comes into play. Just as we the people allow federal agencies to remove children from abusive families we can not shield other entities from the basic foundation of this United States. In fact that is why amendment nine states "*the enumeration of these rights*", why the founders refused to put "*what*" law in the fifth amendment, why they chose to use the phrase *law and equity*, why they used the word "*we the people*" and "*more perfect union.*" in the pre-amble and etc..

If you have a different interpretation it is beyond me how you came up with it or how it is constitutional. Any interpretation of the Constitution must not invalidate another part nor remove the intent of the Constitution. It has been argued that the first ten amendments are only protections from the Federal government. If this were true then any citizen would have the right to steal from any other citizen as long as they were not employed by the federal government.

Defense Attorney committed perjury, while arguing disputed material facts.

In the brief of appeal Attorney Michael M Duran has stated as follows:

> *The appellant cannot now – for the first time before this Court -- conjure up new facts and theories that were not present below because this Court must limit its review to those facts, exhibits, depositions, affidavits, and theories that were before the District Court when it entered summary judgement for Cimarron and DynMcDermott.*
>
> ...
>
> *But despite that, the appellant has not presented one shred of evidence establishing that his impairment has substantially limited his speech (or heart) to the satisfy the ADA definition. (Pg26)*

The following are some of the Plaintiff's exhibits submitted into court on August 8, 2000, that clearly show the plaintiff fully informed the court of all facts relevant to Richard Muzzi's disability.

Release paper work from Hospital on October 22, 1998. *Patients Activity: As Tolerated for shower, bath, stairs, sexual activities...Car: if not dizzy or drowsy.* (r 95)

The Early Origins of Autism article. Scientific America, February 2000

> *Diagnostic Categories.*
> *Impairment of Social Interaction: Failure to use eye contact, facial expression or gestures to regulate social interaction.*
> *Impairment of Communication: Failure to use spoken language without compensation by gesture, ...aberrant language(for example repeating a question instead of replying.)*

Restricted and Repetitive Interests and Behaviors: Abnormally intense preoccupation with one subject or activity. (r 140)

Richard Muzzi's medical records from Lafayette General Medical Center on October 21, 1998

PERTINENT LAB AND X-RAY DATA: WBCs are 12.0, hemoglobin 15.4, hematocrit 44.5. His platelets are 216. Glucose is 152. Potassium is 3.3. Drug screen on admission is negative. His EKG shows Sinus Tachycardia, Left Artial Enlargement, Can not rule out inferior infarct, age undetermined. (r 133)

More Disputed Material Facts

Even Cimarron's own attorney Michael Duran argued the disputed material facts in his brief of appeal as follows:

Never did the appellant convey to Cimarron the specifics of his problems during his employment. The appellant contends that his employer was aware of his alleged disabilities because of the hospital discharge sheet that he allegedly faxed to Cimarron. (1R, p61 and 1R, p39). However, this sheet contained absolutely no information whatsoever regarding any problems that the appellant was experiencing. Moreover, even the letter that the appellant claims he delivered to Jay Rose, his supervisor, on December 16, 1998 contained no specific information that the appellant was disabled. (Brief of Appeal pg20)

Jay Rose's affidavit directly conflicts with Richard Muzzi's deposition.

On December 17, 1998, the day after the plaintiff gave Jay Rose a nonspecific letter, the plaintiff sent an unsolicited threatening e-mail message to various employees of Cimarron and DynMcDermott.(r 31)

Again from the Deposition of Richard Muzzi.

Question by Michael Duran during Richard Muzzi's deposition

> *"First of all, did you ever tell then that you had attention deficit disorder?"*
> Answer by Richard Muzzi "*I gave Jay Rose a memo, that I believe you have, that was written to the Equal Employment Opportunity Commission stating my disabilities and stating the problems I was having at work.*" (r 419)

This letter clearly stated the plaintiff's disabilities.

> *I have been diagnosed in 1989 by James Keating L.L.P., G.S.W. Psychotherapist, as ADD and/or Autistic. I have currently been working in therapy with Dr. Arthur Samuels, to remember past physical and sexual abuse.*
> ...
> *I was still having chest pain after being released from the hospital.* (r 96, 97)

Richard Muzzi's supervisor Jay Rose in his sworn statement on August 31, 2000 states that Richard Muzzi sent an unsolicited threatening email message

On December 17, 1998, the day after the plaintiff gave Jay Rose a nonspecific letter, the plaintiff sent an unsolicited threatening e-mail message to various employees of Cimarron and DynMcDermott.. (r 31)

This email clearly is work related as it states as its first line. "*The Work Flow Message Server Application on the server is having mail problems.*" (r 62) After stating

business issues, the letter indicates "*I think a humble Riddle for you all, if you chose, if not you need not read on.*" (r 62)

The deposition of Richard Muzzi clearly indicates that Richard Muzzi does not see the email as threatening

> *Q. Is that the E-mail of later December, 1998?*
>
> *A. I believe so.*
>
> *Q. In which you made reference to God and his ability to kill and destroy?*
>
> *A. I don't believe I made reference to that.*
>
> *Q. You made references to God?*
>
> *A. I did make reference to God, yes* (r 429)

The determination of this letter being a threat is for a jury. However their statement is that it is a threat because it mentions the word God. This broad definition of a threat would mean that every employee who has money in the pocket is a threat to them. Threat is defined as an intention by a person to do or commit reasonable harm, not the word God. This assumption is absurd, because it would hold every preacher in this land a criminal for committing a threat.

Appeals Judges committed perjury and contempt of court.

On March 13, 2001 the Honorable judges, Judge W. Eugene Davis Circuit judge, Judge Edith H. Jones Circuit judge and Judge Harold R. DeMoss, Jr. Circuit judge committed perjury and contempt for the same reasons as the defense attorney and district judge.

> *However, Muzzi never advised his supervisor at Cimarron nor any other employees that he was suffering from Autism or any other disability.*
>
> ...

We have carefully reviewed the briefs, the reply brief, the record excerpts, and the relevant portions of the record itself.

Not only is their statement incorrect under the law, since establishing a prima facie case does not require that the employer be told of the disability, but their statement directly ignores the evidence presented by the Plaintiff that Richard Muzzi did in fact inform his employer of his disabilities as the record indicates. On December 16, 1998, Richard Muzzi gave Jay Rose the letter, which he sent to the EEOC on December 14, 1998.

> Question by Michael Duran during Richard Muzzi's deposition
> "First of all, did you ever tell them that you had attention deficit disorder?"
> Answer by Richard Muzzi "I gave Jay Rose a memo, that I believe you have, that was written to the Equal Employment Opportunity Commission stating my disabilities and stating the problems I was having at work." (r 419)

The three judge's ruling is in direct conflict with this courts ruling.

> *by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge .. . The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor see ANDERSON v. LIBERTY LOBBY, INC., 477 U.S. 242 (1986).*

> *A dispute about material facts is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party.*

Anderson v. Liberty Lobby, Inc. , 477 U.S. 242 (1986).

Since evidence was presented that Richard Muzzi informed his Employer of his disabilities, the statement by these judges can only be understood if they weighed the evidence. This is not their function. As stated in Anderson V Liberty Lobby, Inc., 477 U.S. 242 (1986) states.

In addition it is clearly stated in Article VI, Clause 2, that this constitution and all laws made under the authority of the United States shall be the Supreme Law of the Land and that all Judges in every State shall be bound to them.

> *This constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.* Article VI, Clause 2.

Why you can not refuse this petition without comment.

To pass over this petition without out comment, will subject Richard Muzzi to In-Equity and Arbitrary Rule. In-Equity because there is no explanation other then arbitrary rule, for these courts to uphold the law in one case but not another. It is very clear from the constitution that this court's power is to extend to all Cases, in Law and Equity. Article Three, Section 2, Clause 1.

> *The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,*

the Laws of the United States... Article III, Section 2, Clause 1 of the U.S. Const.

Again it does not state equity of law, but Law and Equity. Clearly indicating that equity, justice and equality are to be handed down by the Judicial system when it is feasibly possible. When it is not possible, it is clearly Congress's reasonability to create enough layers of courts to be able to handle this.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. Article III, Section 1.

This court does not have the luxury of denying without comment any case that subjects the petitioner to In-Equity or In-Equity under the law. If this presents an undue burden, Congress should as the constitution state, create more courts as necessary, or the courts could impose sanctions for unwarranted cases more often.

Again the founders of the United States Constitution have made it undeniable that all aspects of our government are to uphold the words of the Constitution.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. Article VI. Clause 3. Of the U.S. Const.

Even in the declaration of Independence these words are unmistakable, all life is created equal, endowed by their Creator with certain unalienable rights; among them life, liberty and the pursuit of happiness.

> *We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.* Scott v. Sanford, *60 U.S. 393 (1857)*

Congress as its balance of power should have the right under 28 USC to prevent this Court from creating any rule that could cause arbitrary rule upon any petitioner.

> *(a) The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under section 2072.* 28 USC 2074

> *Review on a write of certiorari is not a matter or right, but of judicial discretion.* Rule 10 Consideration Governing Review on Certiorari

In addition your denial of this case without comment, will in effect conspire with the lower courts and uphold contempt and perjury. It would there for be my obligation to uphold the Constitution and bring suite against this honorable court, the honorable lower courts and defense attorney for the contempt and perjury to be heard by a jury, as the Constitution states, for twenty three dollars in damages owed to me by the defense or admittance of the truth. The amount of the damages is meaningless. The defense has freely broken the laws and has subjected themselves to its rules. If you in turn violate these laws to prevent them

from being responsible for their actions, you have willing taken on their liability.

> *The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.* Article III, Section 2. Clause 3.

Article III, Section II, Clause 3 does not specify who may hold another accountable for a crime, only that all crimes are subject to be heard before a jury. Summary Judgement may be acceptable in some cases, but once the courts have shown cause and proof that they can not live up to the rules of this honorable court and this land, only a jury has the final decision. This is clearly stated in the constitution. The United States Constitution that all members of government are sworn to uphold. Again Article VI. Clause 3. Of US Const.

In addition the First amendment clearly does NOT state that we can only petition for our own grievances. What, who, were, when and etc.. is clearly left open, for we the people all have a responsibility to make sure all peoples can form a more perfect union of rights. This right is not just entailed to those people who have jobs from a federal or state agency.

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* Amendment I.

Reasons for granting this petition

This honorable court's supervisor powers are clearly needed here. The Plaintiff has clearly proven discrimination and retaliation under the American with Disabilities act. Richard Muzzi has had his constitutional rights violated by the lowers courts and the lower courts along with the defenses attorney have committed perjury and contempt. It is only my desire to use the courts of this land to hold people accountable to their actions. As the One True God has taught me to be responsible for my action on Oct 20, 1998 and my desire to change my action on that night. For the One True God will forgive us even the most unforgivable sin, but will still hold us exactly accountable to intent of our actions, to the extent that only The One True God of all religions can, for our laws are like a child's imitating their parent. For all have been given free will from the One True God, for all life is the One True God's children. And that holding them accountable should not be a windfall for me, but to hold them accountable based on the severity of their actions. And to this honorable court I hold to the same standard. I do not see how your authority to refuse any case you desire to, serves the United States Constitution. So I feel I must mention that based on the constitution your actions on hearing this case are subject to review by a jury of 12 citizens of this United States as clearly stated in constitution as well as the lower courts and the defenses attorney. For denying me this writ without comment subjects me to In-Equity, arbitrary rule and denies me due process of law. For this nation has been forged towards a more perfect Union by all of its citizens, species and resources as the constitutions states, all have come here either freely of their own will, stolen from their land, imprisoned into reservations on this land, and etc.... Even those left behind in distant lands have given great sacrifices towards this nation, from broken

homes, to broken governments, to lost species, lost and contaminated land and water and etc.. Clearly these countless souls who's every single sacrifice is carried by the One True God, shall not be forsaken. For all that befalls this nation is a reminder of all the sacrifices given by all the world so that all may be free to seek freedom from In-Equity and arbitrary rule under a government that fits their needs. But here our words of liberty shining off such gifts of the statue of liberty, written on the liberty bell, undeniable in our preamble of the United States constitution and the constitution, etc.. such words of liberty have surely not been traded so that one's king arbitrary rule is forsaken for a thousand judges' and politicians' arbitrary rule. Since the world's scarifies have paid for the words written in our Constitution, ever citizen; and those citizens held captive on reservations instead of as an Honorable State of this union as we live on their land, has the responsibility to their ancestry to uphold these words, using the laws given to them in the Constitution. No one citizen is above these words. No one citizen can stand quite when they are trampled. You may say that upholding these words is an undue burden, but some jobs worth doing are hard. And this Honorable Court has chosen to do this job, which can be hard. Just as the citizens of every Reservation, Commonwealth, Territory and State of this country by keeping their citizenship and presence here have chosen to uphold these words when it can be hard to do so. For our children watch closely, because tomorrow they shall have all our jobs.

Conclusion

This writ of certiorari should be granted.

Richard Muzzi 5/24/2021

Respectfully submitted, Richard Muzzi Pro Se
3531 Robert Street
New Orleans Louisiana, 70125, 504-822-5239

Agency: United States District Court of Eastern District of Louisiana
Title: Minute Entry
Case Number: 99-2795
Date of Entry: September 26, 2000

Filed
U.S DISTRICT COURT
EASTERN DISTRICT OF LA

2000 SEP 25 PM 4:29

LORETTA G. WHYTE
CLERK
(Stamp)
"s/Loretta G. Whyte".

MINUTE ENTRY
McNAMARA, CHIEF JUDGE
SEPTEMBER 25, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RICHARD MUZZI	*	CIVIL ACTION
VERSUS	*	NO: 99-2795
CIMARRON AND DYNMCDERMOTT	*	SECTION: "D"(4)

Before the court is the **"Motion for Summary Judgement"** filed by Defendants, Cimarron and DynMcDermott. Plaintiff, Richard Muzzi, appearing pro se, filled a memorandum in opposition. The motion, set for hearing on Wednesday, September 20, 2000, is before the court on briefs, without oral argument.

Having review the parties' memoranda, attached exhibits and the applicable law, the court finds that there are no genuine issues of material fact and defendants are entitled to judgement as a matter of law. In this matter, Plaintiff alleges disability discrimination and unlawful retaliation under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. To establish a prima facie case of discrimination under the ADA, Plaintiff must show that: (1) he has a disability; (2) he is a qualified

Date of Entry Sep 26, 2000 (Stamp)

individual for the job in question; (3) he has subject to an adverse employment decision; and (4) he was replaced by a non-disabled person or treated less favorably than non-disabled employees. See 42 U.S.C. 12112(a); Seam v. CSPH, Inc., 179 F.3d 297, 300 (5th Cir. 1999).

The employer must then show a legitimate, non discriminatory reason for its action. Id. However, the employee ultimately bears the burden of showing that the employer's actions were motivated by considerations prohibited by the ADA. Id.

Here, Cimarron has shown that it changed the classification of Plaintiff from a salaried employee to an hourly employee because of a legitimate business response to Plaintiff's consistent inability to meet the hourly requirements for salaried employees. Further, Cimarron's discharge of Plaintiff was a legitimate business response to December 17, 1998 cryptic and rambling e-mail message Plaintiff sent to employees of Cimarron and DynMcDermott, who perceived the e-mail message as threatening not only to themselves but also to the security and safety of the government project on which Plaintiff was working.

Plaintiff has presented insufficient competent summary judgement evidence to show that "but for" his alleged protected disability, he would not have

been changed to an hourly employee or terminated. Similarly, Plaintiff has presented insufficient proof that his termination was in retaliation to Plaintiff's filling of a claim with the Equal Employment Opportunity Commission. He simply cannot "use the ADA as an aegis and thus avoid accountability for his actions." Id.

Finally, even if Plainitff could show that Cimarron and DynMcDermott over-reacted to his e-mail message, the ADA "cannot protect . . .employes from erroneous or even arbitrary personnel decisions, but only from decisions which are unlawfully motivated." Armstrong v. Turner Industries, Inc., 141 F.3d 554, 561 n. 16 (5th Cir. 1998) citation omitted).

Accordingly;

IT IS ORDERED that defendant's "**Motion for Summary Judgment**" be and is hereby GRANTED, dismissing Plaintiff's claims against Defendant;

IT IS FURTHER ORDERED that Plaintiff's "**Motion Requesting Continuance and Sixty Day Extension to Discovery, to Compel answers to Interrogatories, and Motion to Disallow Defendant's Expert Witness**" (filed with the court on September 15, 2000) be and is hereby **DENIED AS MOOT**. Further, to the extent that Plainitff is requesting a Rule 56(f) continuance by such a motion, that request is also **DENIED** as unjustified. ^1

---

1 Trial in this matter set for the week of October 23, 2000, with a Pre-Trial Conference scheduled to be held on October 10, 2000. All discovery had to be completed no later than 30 days prior to the Pre-Trial. (See Minute Entry of April 6, 2000, Doc No 17).

"s/Cheif Judge McNamara".

Agency: United States District Court of Eastern District of Louisiana
Title: Judgement
Case Number: 99-2795
Date of Entry: September 26, 2000

Filed
U.S DISTRICT COURT
EASTERN DISTRICT OF LA

2000 SEP 25 PM 4:29

LORETTA G. WHYTE
CLERK
(Stamp)
"s/Loretta G. Whyte".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RICHARD MUZZI	*	CIVIL ACTION
VERSUS	*	NO: 99-2795
CIMARRON AND DYNMCDERMOTT	*	SECTION: "D"(4)

JUDGEMENT

For reasons set forth in this court's Minute Entry of March 22, 2000, wherein the court granted the Motion to Dismiss filed by Defendant, the Equal Employment Opportunity Commission, and Minute Entry of september 25, 2000, wherein the court granted the Motion for Summary Judgement filed by Defendants, **Cimarron and DynMcDermott,**

II IS ORDERED, ADJUDGED AND DECREED that Judgement be entered herein in favor of Defendants, the Equal Employment Opportunity Commission, Cimarron and DynMcDermott, and against Plaintiff, Richard Muzzi, dismissing Plaintiff's claims against Defendants with prejudice and at Plaintiff's cost.

Date of Entry Sep 26, 2000 (Stamp)

New Orleans, Louisiana, this 25 Day of September, 2000

"s/A. J. McNamara".

A. J. McNAMARA

B. CHIEF JUDGE

Agency: United States District Court of Eastern District of Louisiana
Title: Minute Entry
Case Number: 99-2795
Date of Entry: November 22, 2000

Filed
U.S DISTRICT COURT
EASTERN DISTRICT OF LA

2000 NOV 22 AM 8:43

LORETTA G. WHYTE
CLERK
(Stamp)
"s/Loretta G. Whyte".

MINUTE ENTRY
McNAMARA, CHIEF JUDGE
NOVEMBER 20, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RICHARD MUZZI	*	CIVIL ACTION
VERSUS	*	NO: 99-2795
CIMARRON AND DYNMCDERMOTT	*	SECTION: "D"(4)

Before the court is the **"Motion for Sanctions"** filed by Defendants, Cimarron and DynMcDermott. Plaintiff, Richard Muzzi, filed a memorandum in opposition. The motion, set for hearing on Wednesday,

November 15, 2000, is before the court on briefs, without oral argument.

Defendants filed the instant motion for sanctions after Plaintiff filed his **"Motion Requesting Stay of Judgement while on Appeal from Granted Motion or Summary Judgement"** and **"Motion Requesting Ruling of Inadmissible Evidence and Motion to Strike"**. The court denied both of these motions, finding that:

> In this .. Motion to Stay, Plaintiff has failed to show he is entitled to relief under the Federal Rules of Civil Procedure, and he has failed to provide any substantive grounds supporting his request for a stay.
>
> Date of Entry Nov 22, 2000 (Stamp)
>
> Plaintiff's other motions are evidentiary motions which are untimely.

(Minuet Entry of November 1, 2000, Doc. No 44)

Now, after giving the Plaintiff the opportunity to respond to Defendants' Motion for Sanctions, and having considered the memoranda filed by the parties, the record, and the applicable law, the court finds that Plaintiff's **"Motion Requesting Stay Of Judgement while on Appeal from Granted Motion of Summary Judgement"** and **"Motion Requesting Ruling of Inadmissible Evidence and Motion to Strike"** were frivolous, incomprehensible in large part, and caused Defendants "needless increase in the cost of (this) litigation" in contravention of Federal Rule of Civil Procedure 11(b)(1).^1 Accordingly;

IT IS ORDERED that Defendants' "Motion for Sanctions" be and is hereby **GRANTED**;

IT IS FURTHER ORDRED that Plaintiff pay Defendants, within 30 days of this order, the sum of $500.00, which the court finds is the amount of monetary sanctions "sufficient to deter repetition" of

conduct which violates Rule 11. Fed.R.Civ.Proc. 11(c)(2).

"s/Cheif Judge McNamara".

---

1 The court recognizes that Plaintiff is appearing pro se. However, not only does Rule 11 specify that an "unrepresented party" must conform to its requirements, but also the Fifth Circuit has condoned the sanctioning of pro se litigants for "frivolous behavior". Doyle v. United States, 817 F.2d 1235, 1237 (5th Cir. 1987).

Agency: United States Court of Appeals for the Fifth Circuit
Title: Judgement/Opinion
Case Number: 00-31224
Date of Entry: March 13, 2001

U.S COURT OF APPEALS
Filed

MAR 13 2001

CHARLES R. RULBRUGE III
CLERK
(Stamp)

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 00-31224
Summary Calendar

RICHARD MUZZI,

Plaintiff-Appellant,

VERSUS

CIMARRON, DYNMCDERMOTT,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana

(99-CV-2795-D)

Before DAVIS, JONES and DeMOSS, Circuit Judges.
PER CURIAM:*

Richard Muzzi, acting pro se, filed suit against his former employer, Cimarron Software Services, Inc., and against DynMcDermott Petroleum Operations Company for whom Cimarron was acting as a subcontractor. Muzzi alleged that he was moved from a salaried position to an hourly-rate employee because he suffered from autism, in voilation of Americans With Disabilities Act. However, Muzzi never advised his supervisor at Cimarron nor any other employees that he was suffering from autism or any other disability. Rather, since Muzzi was arriving late and departing early regularly and was taking extra-long lunch hours on a frequent basis, Cimarron decided to move him to an hourly employee and retain his services. Shortly thereafter, Muzzi wrote a rambling, somewhat incoherent and threatening letter to his supervisor and he was discharged.

Cimarron and DynMcDermott moved for summary judgement which the district court (Judge A. J. McNamara, presiding) granted. Muzzi appealed.

We have carefully reviewd the briefs, the reply brief, the record excerpts, and relevant portions of the record itself. For the reasons stated by the district judge in his Order filed under date of September 25, 2000, we affirm the grant of summary judgement in favor of defendants.

AFFIRMED.

* Pursuant to 5th Cir R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4..

The names of the judges listed below are included here to compile with "**MEMORANDUM** TO THOSE INTENDING TO PREPARE A PETITION" prepared by **WILLIAM K. SUTER** CLERK OF THE COURT and do not appear on this document as show below.

Judge W. Eugene Davis Circuit judge for appeal and rehearing

Judge Edith H. Jones Circuit judge for appeal and rehearing

Judge Harold R. DeMoss, Jr. Circuit judge for appeal and rehearing

Agency: United States Court of Appeals for the Fifth Circuit
Title: COURT Order filed denying petition for rehearing
Case Number: 00-31224
Date of Entry: April 10, 2001

U.S COURT OF APPEALS
Filed

APR 10 2001

CHARLES R. RULBRUGE III
CLERK
(Stamp)

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 00-31224

RICHARD MUZZI,

Plaintiff-Appellant,

VERSUS

CIMARRON, DYNMCDERMOTT,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana

ON PETITION FOR REHEARING

Before DAVIS, JONES and DeMOSS, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied

ENTERED FOR THE COURT:

"s/Harold R DeMOSS".
United States Circuit Judge

REHG-2

CLERKS'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

Agency: U.S EQUAL EMPLOYMENT OPPOTUNITY COMMISSION New Orleans District Office
Title: Letter summarizing evidence in charge.
Change Number: 270-99-0461
Date of Entry: May 25, 1999

U.S EQUAL EMPLOYMENT OPPOTUNITY COMMISSION
New Orleans District Office

US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (seal)

701 Loyola Ave., Suite 600
New Orleans, LA 70113-9936
PH: (504) 589-2320
TDD: (504) 589-2958
FAX: (504) 589-6861

FNO ENF T2

Richard Muzzi
2314 Jefferson Avenue
New Orleans, LA 70115

Re: EEOC Charge Number 270-99-0461
Richard Muzzi v Cimarron

Dear Mr. Muzzi:

The purpose of this letter is to summarize the evidence upon which the District Director or her designee will make a determination on the merits of your charge.

You alleged that you were changed from salaried to an hourly employee because of your disability and

discharged due to your disability and in retaliation for informing your supervisor that you had filed a claim with the EEOC Office. The Evidence shows that you were changed to an hourly employee before your employer learned of your disability. The evidence shows that you were changed due to your failure to consistently work an average of 40 hours per week which is a requirement to maintain salaried status. The evidence shows that you were discharged due to improper performance [E-mail sent by you to a list of people at SPR and customer's employees]. In conclusion, the evidence did not support your allegation that the statute has been violated and the Commission has determined that it will not investigate any further.

A dismissal and Notice of Rights will be issued to you based on the evidence described above. You will have 90 days from your receipt of the Dismissal and Notice of Rights, EEOC Form 161, to pursue this matter on your own in Federal District Court if you decide to pursue this matter further.

May 25, 1999
Date

Sincerely,
"s/Sheila W. Henry ".
Sheila W. Henry
Investigator

Agency: U.S EQUAL EMPLOYMENT OPPOTUNITY COMMISSION New Orleans District Office
Title: DISMISSAL AND NOTICE OF RIGTHS
Change Number: 270-99-0461
Date of Entry: June 23, 1999

U.S EQUAL EMPLOYMENT OPPOTUNITY COMMISSION

EEOC Form 161 (10/96)

Certified Mail #Z 076 000 909 DISMISSAL AND NOTICE OF RIGHTS

To: Richard Muzzi
2314 Jefferson Avenue, Apt B
New Orleans, LA 70115

From: Equal Employment Opportunity Commission
New Orleans District Office
701 Loyola Avenue, Suite 600
New Orleans, LA 70113-9936

[ ] On Behalf od person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR 1601.7(a))

Charge NO: 270-99-0461
EEOC Representative: Shiri A. Ndang, Supervisory Investigator
Telephone No: 504/589-6034

The EEOC is closing its file on this charge for the following reason:
[ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ] We Cannot investigate your charge because it was not filed within the time limit required by law.

[ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conference, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

[ ] While reasonable efforts were made to locate you, we were not able to do so.

[ ] You had 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained established violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] other (briefly state) _____

-- NOTICE OF SUITE RIGHTS --

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suite in federal or state court against the respondents(s) named in the charge.

If you decide to sue, you must sue <u>WITHIN 90 DAYS</u> from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act(EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years(3 years) before you file suit may not be collectible.** (If you file suite, please send a copy of your court complaint to this office.)

On behalf of the Commission

"s/Patricia T. Bivins".
Patricia T. Bivins, District Director

<u>June 23, 1999</u>
Date

Enclosure(s) Copy of Charge
Cc: Cimarron

Supreme Court, U.S.
FILED
JUN 20 2001
CLERK

No. 00-1792

In The

Supreme Court of the United States

RICHARD MUZZI,

Petitioner,

v.

CIMARRON SOFTWARE SERVICES, INC. and DYNMCDERMOTT PETROLEUM OPERATIONS COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents request that this Court deny the Petition for Writ of Certiorari seeking review of the Opinion of the Court of Appeals for the Fifth Circuit, Docket No. 00-31224, which summarily affirmed the Judgment of United States District Court Judge A.J. McNamara, Docket No. 99-2795. The Opinion of the Court of Appeals for the Fifth Circuit is reproduced in the Appendix of the Petition and is herein referred to as the Court of Appeals' Opinion or Decision. The Opinion of the Judgment of the District Court Judge is also reproduced in the Petition's Appendix and is herein referred to as the District Court's Opinion or Decision.

STATEMENT OF JURISDICTION

This Court should not exercise jurisdiction over this case pursuant to 28 U.S.C. § 1254(1) or Supreme Court Rule 10(a) or (c) because there is neither an important federal question involved, nor does the Court of Appeals' Opinion or that of the District Court conflict with any decision of this Court. Moreover, the Petition mainly consists of alleged factual errors, which, under this Court's own Rule 10, rarely support the granting of a Petition for Writ of Certiorari.

STATEMENT OF THE CASE

I.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURTS BELOW

From his original complaint through his constant flow of unfounded motions (which ultimately resulted in Rule 11 sanctions against him) to his current Petition before this Court, the Petitioner, Richard Muzzi, has besieged this Court; the Court of Appeals for the Fifth Circuit; the District Court; Cimarron Software Services, Inc. ("Cimarron"); DynMcDermott Petroleum Operations Company ("DynMcDermott"); and the EEOC with frivolous claims, not one of which has validity in fact or in law.

The Petitioner's claims were rooted in allegations of disability discrimination and unlawful retaliation under the ADA. Seeking what amounted only to an apology, the Petitioner sued Cimarron, DynMcDermott, and even the EEOC itself (though the EEOC was soon dismissed by the District Court). Cimarron and DynMcDermott filed a Motion for Summary Judgment on September 5, 2000.

The District Court granted their Motion for Summary Judgment on September 26, 2000 because there were no genuine issues of material fact to support the Petitioner's claims and because Cimarron and DynMcDermott had legitimate, non-discriminatory reasons for their actions. Even after the District Court had entered its judgment, however, the Petitioner continued to file improper motions in that Court, resulting in the imposition of sanctions against him. On March 13, 2001, the Court of

Appeals for the Fifth Circuit affirmed the District Court. This Petition followed.

II.

STATEMENT OF THE FACTS

Cimarron, an information systems provider and a Respondent herein, extended to the Petitioner, Richard Muzzi, a salary offer in a letter dated January 23, 1998. The Petitioner accepted and was hired by Wendell Jay Rose ("Jay Rose") on January 28, 1998 as an applications systems analyst. Jay Rose was the Petitioner's supervisor and the project manager for Cimarron. The Petitioner was an at-will employee, as was clearly spelled out in the January 23, 1998 letter.

For eight years, Cimarron was the subcontractor to DynMcDermott, another Respondent. DynMcDermott, the prime contractor, is a perennial servicer of the United States government and the Department of Energy ("DOE"). DynMcDermott has been responsible for managing the Strategic Petroleum Reserve ("SPR") for the DOE, and Cimarron augmented DynMcDermott's workforce and provided information services.

The SPR is a project of strategic and economic importance to the United States because it stores 600 million barrels of crude oil for the United States government under the auspices of the DOE and thus could be subject to foreign and domestic espionage or sabotage. As a result of these possibilities, security and safety are primary concerns at the SPR.

The Petitioner's performance and attendance at work were satisfactory for several months; in fact, his performance merited him an award. However, in late September and into October of 1998, he began to be absent from work excessively. Each week, he was working far fewer than 40 hours, though the Petitioner never explained the reasons for his absences.

It was later learned that he was hospitalized in late October of 1998. The Petitioner did not notify his supervisor, Jay Rose, or anyone else from Cimarron or DynMcDermott regarding the reasons for the hospitalization, which caused him to miss several more days of work. Although the Petitioner eventually did tell Jay Rose that he was hospitalized, he nevertheless admitted under oath that he provided no details of any problems at any time:

> Q. Did you tell [Jay Rose] why you were in the hospital?
>
> A. I don't recall. I don't think I did. I told him that I was in the hospital and I had to stay there, but I don't remember telling him exactly why I was there.

At the time, the Petitioner only told Jay Rose that he did not want to say what the problem was, but that he thought everything was now under control.

After the hospitalization, Jay Rose continued to confront the Petitioner about his overlong lunch breaks and missed days of work. When confronted, the Petitioner still refused to say why he was missing so much work. Unbeknownst to anyone, he was going to therapy during work time for alleged mental problems. However, the

appellant admitted under oath that he never told anyone, during his employment, how he was using his long lunch breaks:

> Q. But you never told anyone at Cimarron or DynMcDermott what you were using your lunch hour for?
>
> A. No. I don't believe so.

Because of his excessive absences, but also to keep him employed, Jay Rose changed the Petitioner from a salaried employee to an hourly employee in mid-November of 1998. He had become unable to work an average of 40 hours per week, never conveying any specific reasons to Cimarron or DynMcDermott for his inability to do so.

The Petitioner continued to work fewer than 40 hours per week even after his employment status was changed. Cimarron has an "open-door policy" set forth in its employee handbook, but the Petitioner never chose to exercise it – never chose to tell anyone what was going on.

On December 16, 1998, the Petitioner gave Jay Rose a letter setting forth some concerns about his employment and personal affairs. The Petitioner, however, did not make clear to his supervisor, either orally or in the letter, that he was suffering from any alleged disability. In fact, neither Jay Rose nor Cimarron was ever aware, during the Petitioner's employment, that the Petitioner was suffering from any disability whatsoever. Nor was DynMcDermott ever aware of this. Only after his employment ended did the Petitioner specifically bring to anyone's attention the notion that he had some sort of "disability."

The Petitioner admitted to the EEOC investigator that there were no witnesses to the conversation or the exchange of the letter with Jay Rose. At that time, Jay Rose made clear to the Petitioner that other than his attendance problems, he was an asset to the project and a valued employee.

The Petitioner also admitted that an alleged letter of December 14, 1998 to Jay Rose and a nonspecific hospital discharge sheet that was allegedly faxed to Cimarron were "the only ways that [he] ever communicated to anybody from DynMcDermott or Cimarron" that he was having problems. However, even if Cimarron received these two documents, which Cimarron denies, neither the letter nor the hospital discharge sheet provided any specific information that the Petitioner had a disability. Thus, neither Cimarron nor DynMcDermott ever knew the details of his problems, or that he was suffering from any alleged disability.

The very next day, December 17, 1998, the Petitioner took considerable time to author, and then send, an unsolicited e-mail message to various employees of Cimarron and DynMcDermott, and then left work early. (In fact, an e-mail of the Petitioner's sent later that same day admitted to his "distraction" from the job he was being paid to do.) The Petitioner was quick to admit that he had in fact authored and disseminated the bizarre e-mail:

> Q. And you admitted that you had, in fact, authored that e-mail and disseminated it?
>
> A. That is correct.

It was a cryptic, rambling message; an abuse of worktime; and a veiled threat to the safety and security that

are necessary for Cimarron, the SPR (DOE), and DynMcDermott. Several employees who received the e-mail expressed concern to both Cimarron and DynMcDermott about it and its troubling content.

In part, the Petitioner wrote: "for what goith to God when we die . . . would not all be free when they accept God in their Heart and Soul, a War that only the One True God can, could and would judge, Thank you Tibet, for strength such as this can only come from the one true God, for how can anything be in vain. . . . "

He went on: "for have we not killed many without knowing it by even our air and rain, remember our past. . . . "

Elsewhere, he continued: "but I remember I only have logic, I pale against ancient traditions and to nature not contest, then I tremble at even comparing me to the One True God, forgive even that slight though down that path. Perhaps God is good at riddles, I'm not. . . . "

Cimarron and DynMcDermott had little choice but to err on the side of caution and regard the e-mail message as a threat to those employees who received it and complained of feeling threatened, as well as a threat to the security and safety of the SPR. In addition, a high-ranking official within the DOE expressed concern about the e-mail message and how Cimarron and DynMcDermott would handle the matter. The SPR being vital to the United States' national security, any perceived threats are taken very seriously. The e-mail compromised Cimarron's policies regarding security and safety breaches, and the Petitioner, like every other employee, was aware of these policies. In fact, at the outset of his employment, the

Petitioner read the security policy for the SPR and signed his name to it, thereby agreeing to follow all security instructions at work.

Understandably, then, the Petitioner was removed from the project. Because there were no other projects in the New Orleans area to put him on, Jay Rose notified the Petitioner on December 21, 1998 that he was terminated because of the e-mail.

The Petitioner then filed a complaint with the EEOC for violations of the ADA, but it was dismissed as without merit. The EEOC articulated its reasons to the Petitioner as follows:

> The evidence shows that you were changed to an hourly employee before your employer learned of your disability. The evidence shows that you were changed due to your failure to consistently work an average of 40 hours per week which is a requirement to maintain salaried status. The evidence shows that you were discharged due to improper performance [E-mail sent by you to a list of people at SPR and customer's employees].

The Petitioner then filed a complaint in federal court seeking nominal damages (between $1 and $22) from Cimarron, DynMcDermott, and even the EEOC. However, at his deposition, the Petitioner asserted that he no longer sought a monetary award from the Respondents; he only wanted his personnel record purged, which really amounted to his desire for an apology.

Moreover, since March of 1999 until the present, the Petitioner has held a full-time job as an analyst with

Interactive Systems International (now known as Energy Work Space). Still, he claims a variety of impairments:

> Q. So now we've got six things that you don't do so well that most normal people do well. That is, your judgment is impaired, your memory is impaired, your ability to interact with people is impaired, your energy level for interacting with people is impaired, your attention is impaired, and your ability to control facial expressions is impaired; right?
>
> A. That's correct.

Nonetheless, other than the one "error in judgment" resulting in his discharge from Cimarron, he has neither been disciplined, nor missed one day of work, nor suffered any decrease in pay because of any alleged mental disability. Moreover, the Petitioner has offered **no specific examples** of how his impairments have cropped up and caused problems in his daily personal life, other than his allegations that he does not "have as many friends as I want" and that he is tired when he returns home after a long workday.

REASONS FOR DENYING THE WRIT

I.

THIS COURT HAS NO JURISDICTION TO CONSIDER PETITIONER'S ARGUMENTS

This Court does not review decisions of a United States Court of Appeals unless an important federal question has been decided in conflict with another United

States Court of Appeals or State Court of last resort or this Honorable Court. 28 U.S.C. § 1254(1) and S. Ct. R. 10(a), (c). *See Braxton v. United States*, 500 U.S. 344, 347 (1991). Moreover, a "petition for writ of certiorari will be granted only for compelling reasons." S. Ct. R. 10. In light of this, the Court will **only** grant review where there are "special and important reasons" to do so. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955).

The Petitioner, however, did not – because he could not – assert in his Petition any "compelling," "special," or "important" reason regarding why this Court should grant review of this matter. *See* S. Ct. R. 10 and *Rice*, 349 U.S. at 74. He did not – because he could not – invoke any of the grounds this Court takes into account in deciding whether to grant review. *See* S. Ct. R. 10(a), (c). Rather, the Petitioner's entire Petition mainly focused on his contention that neither the District Court nor the Fifth Circuit properly considered the *facts*. But the truly significant fact is that a "petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings." S. Ct. R. 10.

There is no jurisdictional basis, and none has been invoked, that supports the Petitioner's writ and that therefore allows this Court to grant review. The Petitioner has not cited – nor could he cite – any important questions of federal law in this matter that are decidedly different among the Courts of Appeals, by a State Court of last resort, or any decision in conflict with precedent of this Court. The District Court and the Fifth Circuit properly decided this case, and the Petitioner's writ should be denied.

Of further concern is that his Petition – to put it mildly – lacks "accuracy, brevity, and clarity" and is riddled with "irrelevant, immaterial, [and] scandalous matter." S. Ct. R. 14(4) and 24(6). The main thrust of his troubling Petition is that this Court should intervene because the District Court Judge and the Fifth Circuit Judges all committed "perjury and contempt" by finding in favor of the Respondents. The Petitioner has likewise charged that counsel for the Respondents committed "perjury and contempt" in presenting this case below. Moreover, the Petitioner has threatened to bring suit against this Honorable Court if it "conspire[s] with the lower courts and uphold[s] contempt and perjury" and refuses to grant his Petition. Given such unseemly accusations and threats, this Court "should disregard or strike [his] brief." S. Ct. R. 24(6).

II.

THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT WARRANT REVERSAL OF THE DISTRICT COURT'S DECISION

A. Given His Numerous Absences and Threatening E-mail Message, Cimarron Did Not Violate the ADA By Changing the Petitioner's Employment Status and Ultimately Terminating Him.

1. The Evidence Does Not Support Disability Discrimination.

The District Court determined that even if the Petitioner could prove a *prima facie* case, it was proper for Cimarron to change his employment status and ultimately terminate him given his numerous absences and

the threatening e-mail message. Cimarron had legitimate, non-discriminatory reasons for its actions and therefore did not discriminate against the Petitioner **"because of"** any disability. *See* 42 U.S.C. § 12112 and *Seaman v. CSPH, Inc.*, 179 F.3d 297, 300 (5th Cir. 1999) (emphasis added).

To be sure, the required direct proof or inference of unlawful intent under 42 U.S.C. § 12112 is missing because (1) the Petitioner has produced no evidence to support his conclusory allegations of anti-disability animus on the part of Cimarron; (2) Cimarron's intent in changing the Petitioner from salaried employment to hourly employment was a legitimate business response to his consistent inability to meet the weekly hourly requirements for salaried employees; and (3) Cimarron's discharge of the Petitioner was a legitimate business response to the December 17, 1998 e-mail message sent to Cimarron's and DynMcDermott's employees.

The Petitioner's rambling e-mail contained cryptic, ominous messages that were considered a potential threat to the safety of Cimarron's and DynMcDermott's employees. It was grounds for immediate termination, especially given the national security interests of the SPR and the DOE. Far from offering proof that Cimarron discharged him **because of** any disability, the Petitioner admitted he wrote and sent the e-mail.

The Petitioner was not terminated because of his alleged disability, but rather because he ran afoul of Cimarron's and DynMcDermott's legitimate expectation of appropriate workplace behavior. *See Hamilton v. Southwestern Bell Telephone Co.*, 136 F.3d 1047, 1052 (5th Cir. 1998). Cimarron found the nature and content of the

Petitioner's c-mail to be a serious safety and security threat at the SPR and terminated him for this reason, not his alleged disability. *See Smith v. Leggett Wire Co.*, 220 F.3d 752 (6th Cir. 2000) (holding that an employee's death threat was a legitimate nondiscriminatory reason for firing him).

Furthermore, the ADA does not insulate an employee's emotional or violent outbursts attributable to an impairment. *Hamilton*, 136 F.3d at 1052. An employee who is fired because of an outburst at work directed at fellow employees has no ADA claim. Cimarron had instituted its policy against inappropriate workplace behavior with provisions for suspension and dismissal for severe offenses well before the Petitioner's misconduct, and as a Cimarron employee, he was aware that he would be held accountable for violating this policy. The bizarre e-mail that recipients perceived as a threat was Cimarron's reason for firing the appellant. Whether or not the Petitioner had a disability that limited his major life functions or was an otherwise qualified individual under the ADA, the Petitioner cannot hide behind the ADA and avoid accountability for his misconduct.

The Fifth Circuit has itself recently delineated the distinction between termination for misconduct and termination because of a disability. In *Seaman v. CSPH, Inc.*, an employee returned to work following a mental breakdown and notified his supervisor of an EEOC charge. *Seaman*, 179 F.3d at 301. In that same conversation, the employee yelled and screamed at his supervisor, and the latter fired the employee for insubordination. *Id.* The Fifth Circuit affirmed Summary Judgment for the employer, despite the close timing between a protected

activity and an adverse employment decision. *Id.* The Court stated that an employee "may not use the ADA as an aegis and thus avoid accountability for his own actions." *Id.*

Similarly, in this case, the Petitioner should be expected to conform to reasonable rules of conduct, regardless of his alleged disability. Such reasonable conduct would include presumably not misspending company time and disseminating cryptic, ominous e-mails that put fellow employees and managers in fear not only of their own safety but also of the security of a government project with significant economic and defense implications.

Moreover, Jay Rose both hired and fired the Petitioner. The Petitioner thus must present "substantial evidence" to overcome the "strong presumption" against discrimination existing by virtue of the "same actor inference." *See Grady v. Affiliated Cent., Inc.*, 130 F.3d 553, 560 (2d Cir. 1997), *cert. denied*, 525 U.S. 936 (1998) ("When the same person who made the decision to fire was the same person who made the decision to hire, it is difficult to impute to [him] an invidious motivation."). Indeed, the Petitioner has provided no "substantial evidence" – nor any evidence at all – to overcome this "strong presumption" against discrimination by Jay Rose (or Cimarron or DynMcDermott).

Finally, "it is the [employer's] perception of the employee's performance that is relevant, not [Petitioner's] subjective evaluation of [his] own relative performance." *Shorter v. ICG Holdings, Inc.*, 188 F.3d 1204, 1209 (10th Cir. 1999). *See Armstrong v. Turner Indus., Inc.*,

141 F.3d 554, 560 n.16 (5th Cir. 1998) (noting that the ADA protects employees from unlawfully motivated and not erroneous or arbitrary personnel decisions). Thus, despite the fact that the Petitioner believes that Cimarron and DynMcDermott over-reacted to his e-mail message (and absences), employers have wide latitude to exercise their business judgment and should not be second-guessed. *Id.*

Therefore, the District Court indeed correctly found that Cimarron (and DynMcDermott) had legitimate, non-discriminatory reasons for changing the Petitioner's employment status and for ultimately discharging him. The Petitioner came forward with absolutely no evidence challenging those reasons, so this Court should deny his Petition.

2. The Evidence Does Not Support Unlawful Retaliatory Discharge.

The District Court asserted that even if the Petitioner could establish a *prima facie* case, he could not prove that he would not have been terminated "but for" that protected disability. *See Seaman*, 179 F.3d at 1301. In other words, even if the presence of a protected disability is a "substantial element" in the decision to terminate an employee, no liability for unlawful retaliation arises if the employee would have been terminated even in the absence of the protected disability. *Long v. Eastfield College*, 88 F.3d 300, 305 (5th Cir. 1996).

The Petitioner was terminated for misconduct that threatened to compromise the safety and security of Cimarron's and DynMcDermott's employees as well as the SPR itself. The Petitioner has not and cannot set forth

controverting evidence establishing that this legitimate, non-discriminatory, and non-retaliatory reason was a pretext for unlawful retaliation. *See Elliott v. Group Med. & Surgical Services*, 714 F.2d 556, 566 (5th Cir. 1983).

Never did the Petitioner convey to Cimarron the specifics of his problems during his employment. The Petitioner contends that his employer was aware of his alleged disabilities because of the hospital discharge sheet that he allegedly faxed to Cimarron. However, this sheet contained absolutely no information whatsoever regarding any problems that the Petitioner was experiencing. Moreover, even the letter that the Petitioner claims he delivered to Jay Rose, his supervisor, on December 16, 1998 contained no specific information that the appellant was disabled.

Moreover, at that time, the Petitioner did not tell Jay Rose, or lead him to believe, that he was disabled; and the Petitioner admitted to EEOC investigators that there were no witnesses to this exchange with Jay Rose. Nor did Jay Rose ever receive any letter detailing any ADA disabilities.

Thus, Cimarron (and DynMcDermott) had no knowledge that the Petitioner had an alleged disability when it terminated his employment. Even if the Petitioner could prove that Cimarron knew he had been acting erratically or was seeking counseling, that knowledge is not alone sufficient to show that Cimarron either knew the Petitioner was disabled or that Cimarron regarded him as such. *See Crandall v. Paralyzed Veterans of America*, 146 F.3d 894, 898 (D.C. Cir. 1998) (holding that an offer of paid medical leave does not establish that the employer

regarded the employee as disabled); *Cody v. CIGNA Healthcare*, 139 F.3d 585, 599 (8th Cir. 1998) (holding that inducing an employee to take medical leave or to submit to a psychological evaluation before returning to work does not establish that an employer knew the employee was disabled); and *Sarko v. Penn-Del Dir. Co.*, 968 F. Supp. 1026, *aff'd*, 189 F.3d 464 (3d Cir. 1999) (holding that an employer's knowledge of an employee's depression and effects of medication was insufficient to establish that the employer regarded her as disabled).

Nonetheless, even assuming Cimarron knew that the Petitioner was disabled, the Petitioner cannot prove that "but for" his disability, he would not have been fired. The Petitioner sent a rambling, threatening e-mail to various Cimarron and DynMcDermott employees on December 17, 1998, the day after he supposedly gave Jay Rose his letter. That was grounds for termination in and of itself because it threatened to compromise the safety and security required for the SPR project. Policies regarding safety and security were set forth at Cimarron and DynMcDermott, and the Petitioner signed off on those policies when he began his employment, and thereby pledged to uphold those policies. He clearly chose not to uphold them.

The Petitioner has suggested in his Petition that this Court should find in his favor merely because there was a "close proximity" between the time he feels he conveyed to Jay Rose notice of an alleged disability and the time of his discharge. But that is not the law. In *Seaman*, an employee with a mental condition yelled and screamed at his supervisor and, in the same conversation, notified his supervisor of an EEOC charge. *Seaman*, 179 F.3d at 1301. The supervisor fired the employee for insubordination.

Id. The Fifth Circuit affirmed Summary Judgment for the employer and dismissed the retaliation claim, despite the "close proximity" between the protected activity and adverse employment decision. *Id.* Accordingly, "the mere fact that some adverse action is taken after an employee engages in some protected activity will not always be enough" to satisfy the Court. *Swanson v. General Servs. Admin.*, 110 F.3d 1180, 1188 n.3 (5th Cir. 1997). The federal law's "protection against retaliation does not permit EEO complainants to disregard work rules or job requirements." *Id.*

Cimarron has articulated a legitimate, non-discriminatory reason for firing the Petitioner: a rambling, ominous e-mail that threatened to compromise Cimarron's, DynMcDermott's, and the SPR's security and safety. Clearly, the Petitioner has been unable to show that he would not have been terminated "but for" his alleged disability, and thus the District Court's and Fifth Circuit's decisions should be upheld.

B. The Petitioner's Mental Impairment Does Not Render Him "Disabled" Under the ADA.

In addition to the fact that the evidence does not support either disability discrimination or unlawful retaliatory discharge, the Petitioner has offered no evidence at all to establish that he suffers from a disability protected by the ADA. *Rogers v. International Marine Terminals, Inc.*, 87 F.3d 755, 758 (5th Cir. 1996). The ADA confers a special meaning to the term "disability":

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; or
>
> (B) a record of such an impairment; or
>
> (C) being regarded as having such an impairment.

Hamilton, 136 F.3d at 1050 and 42 U.S.C. § 12102(2).

Because the Petitioner makes no claim other than that he falls under the first subsection of the disability definition, there is a three-step inquiry. The first question is whether his condition constitutes a physical impairment. *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998). The next step involves identifying the life activity upon which the Petitioner relies to determine whether it constitutes a major life activity under the ADA. *Id.* Third, tying the two statutory phrases together, the Court asks whether the impairment substantially limits the major life activity. *Id.*

The ADA does not define "substantially limits" or "major life activities," but the regulations promulgated by the EEOC under the ADA provide significant guidance. Whether an impairment is "substantially limiting" is determined in light of: 1) the nature and severity of the impairment; 2) its duration or expected duration; and 3) its permanent or expected permanent or long term impact. 29 C.F.R. § 1630.2(j). The EEOC regulations adopt the same definitions of "major life activities" used in the Rehabilitation Act. *Hamilton*, 136 F.3d at 1050. "Major life activities" means "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i).

In his deposition, the Petitioner asserted that, because of his mental condition, he has had several impairments. His judgment is impaired; his ability to interact with people is impaired; his memory is impaired; his energy level for interacting with people is impaired; his attention is impaired; and his ability to control his facial expressions is impaired.

Not one of his many concerns, however, is listed under the federal statute's definition of "major life activities." The Petitioner's impairments have simply not been severe enough to substantially limit any major life activities – like walking, talking, and working. In fact, he has held a full-time job as an analyst from March 1999 until the present with Interactive Systems International (now known as Energy Work Space). During that time, he has neither been disciplined, nor missed one day of work, nor suffered a decrease in pay, nor suffered any ill-effect in his personal life, because of any alleged disability. Clearly, he has been able to perform major life activities in spite of his alleged mental condition.

The Petitioner has seemed most concerned because he has not interacted well with people since the onset of his mental condition. But this is not enough to satisfy the disability definition. The First Circuit recently held that an employee's dysthymia, which affected his ability to get along with others, did not substantially impair a major life activity. *Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12, 15 (1st Cir. 1997).

Moreover, the Petitioner in his Appellant Brief to the Fifth Circuit and his Petition to this Court suggested for the first time that he is disabled because his alleged

impairment has affected his speech (and heart) and thus limited a major life activity listed under 29 C.F.R. § 1630.2(i). At the appellate level, however, the Petitioner cannot conjure up new facts and theories that were not presented in the District Court because this Court, like the Fifth Circuit, must limit its review to those facts, exhibits, depositions, affidavits, and theories that were before the District Court when it entered Summary Judgment for Cimarron and DynMcDermott. *See Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667 (5th Cir. 1995); *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300 (5th Cir. 1988); *Liberles v. County of Cook*, 709 F.2d 1122 (7th Cir. 1983); *Ramsey v. U.S.*, 463 F.2d 815 (D.C. Cir. 1972), *cert. denied*, 421 U.S. 913 (1975); and *Crompton-Richmond Co. v. Smith*, 392 F.2d 577 (3d Cir. 1967). *See also* C. Wright, A. Miller & M. Kane, 10A *Federal Practice and Procedure: Civil 2d* § 2716 (1998). **Significantly, the Circuits are uniform on this issue.**

But despite that, the Petitioner has not presented one shred of evidence establishing that his impairment has *substantially limited* his speech (or heart) to satisfy the ADA definition. To the contrary, the fact that he has performed impeccable work at his new job for almost two years clearly shows that there has been no substantial limitation of his speech or any other major life activity.

III.

THE DISTRICT COURT CORRECTLY DETERMINED THAT CIMARRON AND DYNMCDERMOTT COMPLIED FULLY THROUGHOUT DISCOVERY

A. The Petitioner Has Made Baseless and Improper Attacks on the Judges and Counsel for Respondents to Secure a Reversal of the District Court's Discovery Rulings.

The Petitioner's claim that Cimarron and DynMcDermott thwarted the discovery process is without merit. The Respondents answered fully and truthfully each of the Petitioner's numerous discovery requests. Also without merit is his contention that the District Court (and Fifth Circuit) incorrectly ruled against his discovery motions.

Many of the same discovery abuse claims that the Petitioner has raised before this Court were previously raised in motions before the District Court (and in his Appellant Brief to the Fifth Circuit) and denied as moot or as untimely. *See McCullough v. Lynaugh*, 835 F.2d 1126, 1126 (5th Cir. 1988); *Jourdan v. Jabe*, 951 F.2d 108 (6th Cir. 1991); and *King v. Atiyeh*, 814 F.2d 565 (9th Cir. 1987) (all holding that even pro se litigants like the Petitioner must adhere to basic procedural deadlines imposed by the Court or statutory rule). The Petitioner's sole argument for this Court now to revisit these issues and reverse the District Court's rulings is his dubious contention that counsel for Respondents, the District Court Judge, and the Fifth Circuit Judges all somehow committed "perjury and contempt." This is not the first time, however, that

the Petitioner has made such wild attacks. In his Appellant Brief to the Fifth Circuit, he charged that the District Court's discovery rulings were based on the fact that the "judge has some bias against" him and has "favoritism for" Cimarron and DynMcDermott.

Instead of directing this Court to some abuse of discretion made by the Judges below, the Petitioner has offered nothing more than *ad hominem* attacks (without one scintilla of evidence) to secure a reversal of various contested discovery and procedural rulings. *See McKethan v. Texas Farm Bureau*, 996 F.2d 734, 739 (5th Cir. 1993). The District Court (and the Fifth Circuit) correctly addressed and ruled on the Petitioner's discovery issues, and this Court has not been presented with one valid reason to overturn the District Court's rulings.

B. Rule 11 Sanctions Against the Petitioner Were Properly Issued by the District Court.

While the Petitioner has made unfounded accusations against the Respondents and the Courts regarding discovery, the Petitioner himself was sanctioned by the District Court pursuant to Rule 11 and ordered to pay $500 for discovery abuses. The District Court found that several of the Petitioner's discovery motions were based in neither fact nor law and caused Cimarron and DynMcDermott needless expense in the litigation. The $500 sanction was levied to deter repetition by the Petitioner. *See* Fed. R. Civ. P. 11(c)(2).

The Petitioner believes, however, that because the District Court did not levy monetary sanctions against Cimarron and DynMcDermott *for whatever reason (even*

though the Petitioner never asked for sanctions and Cimarron and DynMcDermott did nothing to warrant sanctions), the District Court somehow violated the Equal Protection Clause of the Fourteenth Amendment by treating the parties differently. The allegation is baseless.

The Equal Protection Clause of the Fourteenth Amendment is triggered when the government treats two classes of persons differently based on differences between the two classes, whether the differences regard race, gender, alienage, or otherwise. U.S. CONST. Amend. XIV. "The Clause announces a fundamental principle: the State must govern impartially." Therefore, "[o]nly when a governmental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether this principle is violated arise." *See New York City Transit Authority v. Beazer,* 440 U.S. 568, 587-88 (1979).

Here, however, the Petitioner has not suggested to this Court on which *classification* his Equal Protection claim is based, nor has he offered any proof of misconduct by the Courts or the Respondents. Moreover, the District Court did not even "adopt[ ] a rule" for purposes of the Equal Protection Clause when it ordered the appellant to pay $500. *See id.* Indeed, the Petitioner deserved his Rule 11 sanction, and there is no Equal Protection issue here.

Nor is there a Fifth Amendment issue. Courts often levy Rule 11 monetary sanctions against parties for frivolous conduct – even against pro se litigants like the Petitioner. *Doyle v. United States,* 817 F.2d 1235, 1237 (5th Cir. 1987), *cert. denied,* 484 U.S. 854 (1988). The $500

sanction did not violate the Due Process Clause of the Fifth Amendment because the Petitioner was afforded notice and an opportunity to be heard. U.S. CONST. Amend. V and *Connell v. Shoemaker*, 555 F.2d 483, 487 (5th Cir. 1977). The Petitioner even filed an opposition to Cimarron and DynMcDermott's Motion for Sanctions. Thus, his Fifth Amendment allegation is frivolous and should be denied by this Court.

CONCLUSION

This case is not "writ worthy." The Petitioner has failed to show that the District Court's determination is even arguably incorrect, much less in conflict with a decision of this Court, other Courts of Appeals, State Courts, or federal law. The Petitioner's *ad hominem* attacks to the contrary notwithstanding, the District Court Judge's decision is in full accord with controlling decisions of this Court and Courts of Appeals. Summary Judgment was properly entered in favor of Cimarron and DynMcDermott because they had legitimate, non-discriminatory reasons for discharging the Petitioner, given his threatening e-mail and numerous unauthorized absences. Moreover, the Petitioner is not even "disabled" under the ADA because he has not offered any proof of one major life activity that has been substantially limited by his alleged mental impairment. Likewise, the District Court correctly concluded that the Petitioner violated FRCP 11. And the Judge made no errors in his discovery rulings, nor has the Petitioner even clearly articulated

any such errors. For these reasons, it is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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